



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: FeinFocus, USA, Inc.

File: B-245119

Date: December 3, 1991

DECISION

FeinFocus USA, Inc. protests the award of a contract to IRT Corporation under invitation for bids (IFB) No. 10-0015-1 issued by the National Aeronautics and Space Administration (NASA) for a microfocus x-ray system to be installed at the John F. Kennedy Space Center, Florida. The required system is to be used to detect anomalies in the Space Shuttle and associated components prior to launch.

We dismiss the protest because the protester is not an interested party. See 4 C.F.R. § 21.0(a) (1991).

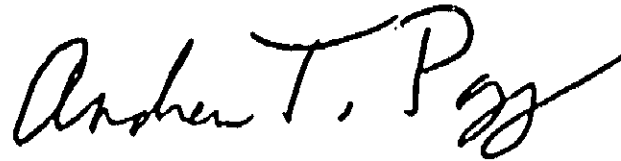
Of the four bids NASA received by the July 12, 1991, extended bid opening date, FeinFocus submitted the apparent low bid.¹ NASA rejected the protester's bid as nonresponsive, however, because in its bid, FeinFocus included certain terms which took exception to material terms of the IFB. Specifically, NASA, among other things, found that FeinFocus's bid contained payment and termination terms that conflicted with Federal Acquisition Regulation (FAR) §§ 52.232-25, 52.249-8--the standard "Prompt Payment" and "Termination for Convenience" clauses incorporated by reference in the IFB. Following the rejection of FeinFocus's bid, NASA awarded the contract to IRT as the next low bidder in line for award on July 29. In its protest, FeinFocus argues that IRT's bid should have been rejected as nonresponsive and that the firm is nonresponsive because the system it will supply does not meet certain requirements of the IFB.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective

¹FeinFocus actually submitted two bids as part of one bid package, based on two different x-ray systems it proposed: "Proposal # Q-2517" for model FXE-160.50, and "Proposal # Q-2518" for model FXE-200.50. We will refer to the firm's "proposals" as its bid.

supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract, 4 C.F.R § 21.0(a). A protester is not an interested party where it would not be in line for contract award were its protest sustained, ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7. Since FeinFocus does not challenge NASA's determination that its own bid was nonresponsive, and since there is at least one other bidder which could be awarded the contract if IRT were found ineligible for award, FeinFocus lacks the direct economic interest necessary to be an "interested party" eligible to protest the award to IRT. York Int'l Corp., B-235079, Apr. 21, 1989, 89-1 CPD ¶ 400.

The protest is dismissed.



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